December 10, 2015

Ms. Brinda Sedgwick-Westbrook
Commission Secretary
Public Service Commission
1325 G Street NW Suite 800
Washington, DC 20005

Dear Ms. Sedgwick-Westbrook:

Our ANC submitted a resolution to the Public Service Commission (PSC) in February 2015 opposing Exelon’s purchase of Pepco Holdings, Inc. (PHI), including our local electric utility Pepco, and a second letter in April reiterating our formal statement “even in light of all the modifications and conditions recently offered or proposed.” We deeply appreciate the attention the Commissioners and staff gave to all the comments and evidence on that proposal, and the strong decision the PSC issued in Order No. 17947 on August 27, 2015, rejecting the Pepco-Exelon application. Now the applicants have entered a non-unanimous settlement agreement with the representatives of the city and some of the other parties in the case and they are asking the PSC to approve Exelon’s purchase of Pepco under those terms.

Our Commission and our constituents are concerned that the settlement does not provide significant enough benefits to Pepco ratepayers in the city, or significant enough assurances that the ratepayers will be protected from higher rate increases than would otherwise be the case. We are also concerned about a loss of local control over Pepco as our electric utility, further obstacles to the development of distributed generation and other innovations to improve the efficiency, reliability, resilience and security of our local electric system, or other decisions by Pepco and Exelon that might be in those companies’ interests but would be highly adverse to ratepayers and the city. Under Exelon, Pepco officials would be obliged to serve the parent company’s interests, not the interests of the District. Exelon ownership also would threaten the PSC’s capacity to regulate the actions of the company with the sole franchise to operate the local electric distribution system.

As the PSC said in its August decision to reject Exelon’s bid to buy Pepco, the two companies have an “inherent conflict” between their priorities and principles that the settlement agreement does not remove or mitigate. Exelon has an interest in seeing Pepco make the highest possible revenues and profits from its electricity service while Pepco’s obligation is to provide reliable electric service at the lowest possible rates, regardless of whether that involves conserving energy use, adopting more efficiencies, or encouraging people to generate their own electricity.

The PSC is required under the Retail Electric Competition and Consumer Protection Act of 1999 not to approve any merger or acquisition involving our electric distribution company that would make it impossible for the Commission to regulate the actions of the utility in a way that effectively protects customers from anti-competitive abuse or other harms that could result from the transaction if it were approved.
The reason for regulating public utilities is to make up for market failures, where the companies have sufficient market power that they could manipulate rates, services, investments and operations to benefit themselves and unfairly disadvantage customers and competitors. It is clear that together Exelon and PHI would be the largest energy company in the region east of the Mississippi River, the largest company in the PJM regional grid, as well as the sole electric distribution company in the territories served by Exelon’s electric utility affiliates. Under the settlement agreement, Exelon would be able to exercise significantly greater power extending not only over electricity supply but also over rates and investments in transmission and other service directly affecting District ratepayers which would not be easily possible for any regulatory body to restrain, and some of the settlement terms might even add to Exelon’s advantage over potential competitors.

We need an electric utility that will serve the interests of the District and its residents, provide economical and reliable electricity service for the long term, and meet our renewable and sustainability goals. And we need a utility company that can be effectively overseen and regulated for the benefit of ratepayers.

During the formal settlement hearing December 2, 2015, Chairman Kane set out the test for meeting the PSC’s standards for approval: “In any merger commitment, not only must there be judgment as to whether it’s in the public interest, but whether there’s some accountability, traceability, assurance that what’s promised is going to be what actually happens.”

We urge the PSC to scrutinize the provisions of the proposed settlement agreement carefully and identify in detail the magnitude of benefits v. the harms the settlement could mean for the city, giving particular attention to the long-term risks and benefits.

The PSC’s initial decision in this case in August was a strong and powerful decision to protect the interests of the city and ratepayers and businesses. The District should not accept a settlement that is not equally strong and effective in serving the city and our policies. You have weighed all the evidence and taken seriously the seven factors of the public interest standards that apply to this type of transaction. As you consider the terms of the proposed settlement agreement, we are hopeful that you will maintain the same standards and not approve anything that would diminish its capacity to regulate the District’s electric utility and create significant harms to the interests of ratepayers and to vital city energy and environmental goals.

We strongly advise you to reject the settlement agreement as not in the public interest.

This letter was approved by a vote of 5-0 at a duly noticed public meeting of ANC3B on December 10, 2015. The Chairman, the Commissioner from ANC3B01, or their designees are authorized to represent the Commission on this matter.

Thank you for your attention.

Jackie Blumenthal
Chairman and Commissioner, ANC3B02

Ann Mladinov
ANC3B01

Mary C. Young
ANC3B02

Abigail Zenner
ANC3B04

Brian Turmail
ANC3B05